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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-YELL- 11802; PPWONRADE2, PMP00EI05.YP0000]

36 CFR Part 7

RIN 1024-AE10

Special Regulations; Areas of the National Park System, Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the amended Record of Decision for the 2011 Winter Use Plan/Environmental Impact Statement and governs winter visitation and certain recreational activities in Yellowstone National Park for the 2012-2013 winter season. The rule retains, for one additional year, the regulation and management framework that have been in place for the past three winter seasons (2009-2010, 2010-2011, and 2011-2012). Specifically, the rule retains provisions that require most recreational snowmobiles operating in the park to meet certain National Park Service air and sound emissions requirements; requires snowmobiles and snowcoaches in Yellowstone to be accompanied by a commercial guide; sets daily entry limits on the numbers of snowmobiles (up to 318) and snowcoaches (up to 78) that may enter the park; and prohibits traveling off designated oversnow routes.

DATES: This rule is effective December 15, 2012.

FOR FURTHER INFORMATION CONTACT: Wade Vagias, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307-344-2035.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has managed winter use in Yellowstone National Park for several decades. A detailed history of the winter use issue, past planning efforts, and litigation is provided on the park's website, <http://www.nps.gov/yell/parkmgmt/timeline.htm>. The park has most recently operated under a temporary one-year rule (76 FR 77131). That rule extended for one winter season the daily entry limits and operational requirements for snowmobiles and snowcoaches adopted by the 2009 interim plan, which had been in effect for the prior two winter seasons, but the authorizations of snowmobile and snowcoach use expired by their own terms on March 15, 2012.

On July 5, 2011, the NPS published a proposed long-term rule to implement the preferred alternative identified in the Draft Winter Use Plan / Environmental Impact Statement (DEIS) (76 FR 39048). Under that alternative, the NPS proposed providing four different use-level combinations for snowmobiles and snowcoaches, which would vary according to a seasonal schedule. The NPS had intended to issue a record of decision and finalize a long-term rule for Yellowstone winter use by December 2011. However, some of the more than 59,000 public comments received on the DEIS raised reasonable questions as to long-term management strategies and environmental impacts, and the NPS decided to delay implementation of a long-term rule in order to prepare a Supplemental Environmental Impact Statement (SEIS) further analyzing the impacts of winter use under various long-term management options.

Accordingly, in its December 2011 Record of Decision (ROD) (76 FR 77249), the NPS announced its decision to select and implement Alternative 8 in the Final Environmental Impact Statement (FEIS). Alternative 8 extended for one additional winter season—the 2011-2012

season—the daily entry limits and operating requirements of the 2009 rule, which allowed up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches in the park per day, as well as authorizing a variety of non-motorized uses. The DEIS and FEIS contained and analyzed an alternative—identified as Alternative 2—implementing those limits and operating requirements indefinitely into the future. On December 12, 2011, the NPS published a final rule to implement Alternative 8 (76 FR 77131). The NPS believed that the additional time afforded by a new one-season rule would allow it to complete the SEIS, decide on a long-term plan for managing winter use, and promulgate a new long-term rule before the beginning of the 2012-2013 winter season.

On June 29, 2012, the NPS released the Draft SEIS and published a Notice of Availability in the Federal Register (77 FR 38824). Public comment on the Draft SEIS closed on August 20, 2012. The response from the public and stakeholders was robust. A majority of the substantive comments addressed the proposal in the Draft SEIS’s preferred alternative to manage snowmobiles and snowcoaches by a new concept known as “transportation events.” Numerous commenters requested additional time to consider this new management concept and to respond substantively to it. Accordingly, the NPS decided to reopen public comment on the Draft SEIS for an additional 30 days. Mindful of the short amount of time left before the opening of the 2012-2013 winter season on December 15, 2012, and desiring to take the time necessary to make a reasoned long-term decision on winter use, the NPS decided to amend the December 2011 ROD to authorize extending the most recent winter use management framework for an additional year. The NPS is promulgating this new rule to extend for one additional winter season the 2011-2012 daily entry limits and operating requirements. The NPS intends to complete the Draft SEIS,

make a decision on a plan for long-term winter use, and issue a new long-term regulation for winter use before the 2013-2014 winter season.

Analysis of Public Comments

The public comment period was open from September 4, 2012 to October 4, 2012. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. The NPS received 33 comments. Most of the comments focused on the analysis in the Draft SEIS and addressed issues related to long-term management. The NPS will consider these comments regarding long-term issues as it works on the SEIS and new rule for the long-term winter use plan. A summary of comments and the NPS responses is provided below.

1. *Comment:* Several comments did not support extending the 2011-2012 daily entry limits and operating requirements for the 2012-2013 winter season, and instead favored implementation of Alternative 4 in the Draft SEIS.

NPS Response: As described above, the NPS decided to extend the 2011-2012 requirements for one additional season to ensure that the public would have additional time to consider the new management concept in the Draft SEIS and to allow the NPS to make a reasoned long-term decision on winter use at Yellowstone National Park.

2. *Comment:* One commenter stated that all regulation of snowmobile use in the park should be removed.

NPS Response: In the 2011 FEIS, the NPS considered but dismissed an alternative that would have removed limits on snowmobile use in the park, due to the fact that unmanaged use could result in impairment to park resources and values.

3. *Comment:* Several commenters stated that the rule should be revised to allow fewer snowmobiles and snowcoaches.

NPS Response: In the 2011 ROD, the NPS determined that use of snowmobiles and snowcoaches in the park at the levels allowed in this rule is appropriate. The data included in the 2011 FEIS demonstrates that allowing 318 snowmobiles and 78 snowcoaches in the park per day results in only minor to moderate impacts to park resources, while allowing the public to experience the park's unique winter resources.

4. *Comment:* Several commenters suggested that the NPS alter the way it tests emissions from snowmobiles and snowcoaches.

NPS Response: The NPS may consider altering the testing standards for snowmobiles and snowcoaches as part of the long-term rule. However, there is not enough time to alter the testing standards for this rule, which goes into effect on December 15, 2012, and applies to the 2012-2013 winter season only.

5. *Comment:* Several commenters suggested that the NPS ban the use of snowmobiles and snowcoaches in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would eliminate motorized oversnow vehicle use. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

6. *Comment:* Several commenters suggested that the NPS allow only snowcoaches in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would prohibit snowmobiles and allow only snowcoaches. This

rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

7. Comment: Several commenters suggested that the NPS increase the number of snowmobiles allowed in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would increase the number of snowmobiles allowed in the park. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

8. Comment: One commenter stated that the NPS should restrict snowmobile use to areas where people and wildlife are not present.

NPS Response: Under this rule, snowmobile and snowcoach use is only allowed on designated routes, which are groomed over roads that are used in the summer and provide access from park entrances to the interior of the park. There are many additional areas and trails that are open to visitors in the park where snowmobile and snowcoach use is not allowed.

9. Comment: One commenter stated that the NPS should impose snowcoach weight limitations that would ban Bombardiers.

NPS Response: The NPS may consider imposing additional restrictions on snowcoaches as part of the long-term rule. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

10. Comment: One commenter stated that unguided snowmobile use should be allowed.

NPS Response: The NPS believes that requiring all snowmobile and snowcoach trips to be guided reduces law enforcement incidents and accidents, and offers the best opportunity for

achieving goals of protecting park resources and allowing balanced use of the park. The guiding requirement has proven effective at keeping groups under the speed limits, staying on the groomed road surfaces, reducing conflicts with wildlife, and ensuring other appropriate behavior for visitors to safely and responsibly visit the park.

Section by Section Analysis

The NPS is revising § 7.13 paragraphs (l)(3)(ii) and (l)(4)(vi) and the introductory text of paragraphs (l)(7)(i) and (l)(8)(i) by replacing the terms “the winter season of 2011-2012” and “the winter of 2011-2012” with the terms “the winter season of 2012-2013” and “the winter of 2012-2013.” These are the only changes to the existing regulations.

Compliance with Other Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The NPS used two separate baselines for its regulatory flexibility analysis. If no new rule were passed, Baseline 1 would be defined by the no-action alternative in the EIS. Under this baseline, no motorized oversnow vehicles would be allowed in the park. In addition, the NPS defined a second baseline, Baseline 2. Baseline 2 represents the continuation of the same levels of use allowed under the 2009 interim regulation in place for the past three winter seasons. Under Baseline 2, there would be a zero net change between the past three years and the actions being implemented under this rule, because the rule extends the management framework in place the past three winter seasons for one additional year. A regulatory flexibility analysis is included in the report titled “Economic Analysis of Winter Use Regulations in Yellowstone National Park” (RTI International, 2011). The NPS has reviewed the economic analysis contained in that report and has concluded that it still is relevant and that its results would apply to the additional year.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based

enterprises. This rule has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S.-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. The rule addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630).

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. Access to private property located adjacent to the park will be afforded the same access during winter as before this rule. No other property is affected. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. Numerous tribes in the area were consulted in the development of the previous winter use planning documents.

Paperwork Reduction Act (PRA).

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the collection requirement associated with Commercial Services and has assigned OMB control number 1024-0125 (expires 03/31/2013). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA).

This winter use plan and rule constitute a major Federal action with the potential to significantly affect the quality of the human environment. The NPS prepared the 2011 FEIS

under the National Environmental Policy Act of 1969. The NPS has reexamined the analyses contained in the 2011 FEIS, as well as new data from the 2011-2012 winter season, and has amended the December 2011 ROD (76 FR 77249) to authorize extending the most recent winter use management framework for an additional year. The 2011 FEIS is available for review at <http://parkplanning.nps.gov/yell> by clicking on the link entitled “Winter Use Plan/EIS” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211, a statement of Energy Effects is not required.

Administrative Procedure Act (Effective Date)

The National Park Service recognizes that under 5 U.S.C. 553(d) new rules ordinarily go into effect thirty days after publication in the **Federal Register**. However, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that good cause exists for this rule to become effective on December 15, 2012, for the following reasons:

(1) A 30-day public comment period was open from September 4, 2012, through October 4, 2012, on the proposed rule, during which the NPS stated its intent to implement this winter use plan during the 2012-2013 winter season as an additional transition year. The NPS has received voluminous public comment on previous rulemaking efforts regarding winter use of the park, including efforts in 2000, 2003, 2004, 2007, 2008, and 2011. Those rulemaking efforts addressed many of the same issues as are addressed in this rulemaking, which simply extends existing rules that have been in place for the previous three winter seasons.

(2) The rule implements the winter use plan for Yellowstone National Park and allows snowmobile and snowcoach use that otherwise would be prohibited.

(3) Since at least December 2011 the NPS has in good faith publicly stated that the 2012-2013 winter season for Yellowstone National Park would commence on the traditional date of December 15, and the public and businesses have made decisions based on the widespread public knowledge of this customary opening date.

(4) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the park will be open under conditions substantially similar to those in effect for the past three years.

(5) Many persons planning to visit the park have already made travel plans in anticipation of the park being open for snowmobile and snowcoach use, such as reserving time off from work, booking airfares and hotel accommodations, making reservations for snowmobile or snowcoach tours, and the like. The Christmas-New Year period is one of the most heavily visited times of the winter season. If the park does not open as scheduled on December 15, 2012, it would create unnecessary hardship for visitors who have already planned trips, and would likely result in economic losses for some visitors if reservations had to be cancelled. Significant revenue loss for businesses in and around the park would also occur. Many businesses in the gateway communities surrounding the park, and the people who rely upon them for their livelihoods, are highly dependent upon the park being open for the entire duration of the approximately 90-day season.

(6) Snowmobile and snowcoach operators have made business decisions and investments for the winter season premised on an opening date of December 15, 2012. Such actions include purchasing new snowmobiles and snowcoaches for their fleets, making offers of employment, preparing advertising and other materials, and purchasing snowmobile accessories such as suits, helmets, boots, mittens, etc. A late opening would shorten an already-brief winter season,

thereby depriving these businesses and others that depend on the winter season (such as hotels, restaurants, service stations, and other hospitality-oriented businesses) of revenue that is important to their livelihoods.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements

In consideration of the forgoing, the NPS amends 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501-511, D.C. Code 10-137 (2001) and D.C. Code 50-2201 (2001).

2. In § 7.13 revise paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) introductory text, and (l)(8)(i) introductory text to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l) * * *

(3) * * *

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2012-2013.

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(4) * * *

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2012-2013.

* * * * *

(7) * * *

(i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are designated for snowmobile use through the winter of 2012-2013:

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(8) * * *

(i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (1)(7)(i)(A) through (1)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes through the winter of 2012-2013:

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Dated: December 5, 2012

Rachel Jacobson
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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